STATE OF MICHIGAN

COURT OF APPEALS

JAMES KIMMER,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 24, 2004

No. 243502
Genesee Circuit Court
LC No. 2001-072214-NF

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

COOPER, P.J. (*dissenting*).

I respectfully dissent from the majority opinion. In order for plaintiff to receive benefits under MCL 500.3106(1)(b), he must show that his injury was a direct result of lifting or lowering the bags of dirt into his vehicle. Here, plaintiff claimed that he was in the process of loading either his second or third bag of dirt when the accident occurred. He stated that he fell after he picked up the bag of dirt and began moving toward his vehicle. I would find that this clearly meets the requirements of MCL 500.3106(1)(b).

Even if this were a close question, which it is not, when deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party.[1] Accordingly, I would find that summary disposition was improperly granted to defendant under MCR 2.116(C)(10).

/s/ Jessica R. Cooper

[1] *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).